General Instrument Corporation, Amtote Systems Division *and* Debra Lavalle *and* Donald H. Lowe, Jr.

International Brotherhood of Electrical Workers, Local 1501, AFL-CIO *and* Debra Lavalle *and* Donald H. Lowe, Jr. Cases 39-CA-163, 39-CA-417, 39-CB-55, and 39-CB-134

July 22, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 17, 1982, Administrative Law Judge Robert A. Giannasi issued the attached Decision in this proceeding. Thereafter, Respondent International Brotherhood of Electrical Workers, Local 1501, AFL-CIO, filed exceptions and a supporting brief, and the General Counsel filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that, at locations other than the Teletrack and Ohio Lottery facilities in dispute, Respondent Employer violated Section 8(a)(2) and (1) of the Act by deducting union dues and fees from employees' wages without valid authorizations during the first 45 days of employment, and that Respondent Union violated Section 8(b)(1)(A) of the Act by accepting such dues. Although ordering Respondents to cease and desist from said unlawful conduct, the Administrative Law Judge refused to order Respondents to reimburse affected employees for such unlawfully withheld moneys. He reasoned that reimbursement was not warranted in this case because the affected employees were covered by a contract containing valid dues-checkoff and union-security clauses, and there was no evidence that any employee was coerced into joining the Union or making payments to it. We disagree.

In support of the recommended denial of reimbursement, the Administrative Law Judge cited *American Geriatric Enterprises, Inc., and its wholly-owned subsidiary Hamilton Medical Convalescent Center, Inc.*, 235 NLRB 1532 (1978), and *International Union of Electrical, Radio and Machine Workers, Local 601, AFL-CIO (Westinghouse Electric Corporation)*, 180 NLRB 1062 (1970). We find those cases distinguishable from the instant case. In the cited cases, the Board held that to order reimbursement of unlawfully checked off dues would be a futile act, since the affected employees were *at all times* obligated to remit dues and simply had been denied their statutory right to decide on the method of payment. Here, the employees affected by the unlawful deductions were not subject to the lawful union-security provisions of the contract during the first 45 days of their employment and therefore had no obligation to pay dues or fees during that period, unless they voluntarily executed checkoff authorization cards. Absent such authorizations, any sums deducted from employees' wages during the first 45 days of employment and transmitted to the Union must be reimbursed.[1] Accordingly, we shall order Respondents jointly and severally to reimburse employees for dues and fees unlawfully withheld without valid authorizations during the first 45 days of employment.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent General Instrument Corporation, Amtote Systems Division, New Haven, Connecticut, its officers, agents, successors, and assigns, and Respondent International Brotherhood of Electrical Workers, Local 1501, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph A,2(c) and reletter the subsequent paragraphs accordingly:

"(c) Jointly and severally with said Respondent Union reimburse, with interest, employees at all its locations, other than the Ohio Lottery and Teletrack facilities, for any dues and fees unlawfully withheld without authorization from their pay during the first 45 days of employment."

2. Insert the following as paragraph B,2(b) and reletter the subsequent paragraphs accordingly:

"(b) Jointly and severally with Respondent Amtote Systems reimburse, with interest, employees at all Amtote Systems locations, other than the Ohio Lottery and Teletrack facilities, for any dues and fees unlawfully withheld without authorization from their pay during the first 45 days of employ-

[1] See, e.g., *San Diego County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Campbell Industries)*, 243 NLRB 147 (1979); *Trico Products Corporation*, 238 NLRB 1306 (1978); *Guadalupe Carrot Packers, d/b/a Romar Carrot Company*, 228 NLRB 369 (1977).

ment, and accepted and retained by Respondent Union."

3. Substitute the attached notices for those of the Administrative Law Judge.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT contribute support and assistance to International Brotherhood of Electrical Workers, Local 1501, AFL-CIO, or any other labor organization of our employees.

WE WILL NOT recognize the above-named Union as the exclusive bargaining representative of any of our Ohio Lottery and Teletrack employees unless and until said labor organization shall have demonstrated its majority status pursuant to a Board-conducted election among said employees.

WE WILL NOT give effect to any of the terms of the collective-bargaining agreement of November 28, 1980, and the amendment to an earlier agreement, dated September 27, 1979, between us and the above-named Union, as well as any modifications, extensions or renewals thereof, insofar as they apply to the Ohio Lottery and Teletrack employees. However, nothing herein shall require us to vary or abandon any wages, hours, or other substantive terms of our relations with our Ohio Lottery and Teletrack employees which have been established in the performance of the contract or to prejudice the assertion of any rights they may have thereunder.

WE WILL NOT assist the above-named Union by deducting from the wages of our employees, at any location, amounts equal to union initiation fees and dues when such deductions are not authorized by said employees through checkoff authorizations.

WE WILL NOT discharge or otherwise interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed under Section 7 of the Act.

WE WILL withdraw and withhold all recognition from the above-named Union as the exclusive bargaining representative of the Ohio Lottery and Teletrack employees for the purpose of collective bargaining unless and until said labor organization shall have demonstrated its majority status pursuant to a Board-conducted election among the Ohio Lottery and Teletrack employees.

WE WILL jointly and severally with said Union reimburse the Ohio Lottery and Teletrack employees for any dues or initiation fees or other moneys paid or checked off pursuant to the aforesaid agreement or amendment or any extension, renewal, modification, or supplement thereof, or to any agreement superseding it, plus interest. Such reimbursement shall not, however, extend to any employees who may have voluntarily joined and been members of the Union before September 27, 1979.

WE WILL jointly and severally with said Union reimburse, with interest, employees at all our locations, other than the Ohio Lottery and Teletrack facilities, for any dues and fees unlawfully withheld without authorization from their pay during the first 45 days of employment.

WE WILL offer to Debra LaValle immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of earnings, plus interest.

GENERAL INSTRUMENT CORPORATION, AMTOTE SYSTEMS DIVISION

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT act as the exclusive bargaining agent of the Ohio Lottery and Teletrack employees of General Instrument Corporation, Amtote Systems Division, unless and until we have demonstrated our majority status pursu-

ant to a Board-conducted election among the Ohio Lottery and Teletrack employees.

WE WILL NOT give effect to any terms of the collective-bargaining agreement of November 28, 1980, and the amendment to an earlier agreement, dated September 27, 1979, between us and Amtote Systems, as well as any modifications, extension, or renewals thereof, insofar as they apply to the Ohio Lottery and Teletrack employees.

WE WILL NOT accept and retain moneys in the amounts equal to union initiation fees and dues which have been deducted from the pay of Amtote Systems employees at any location without their prior written authorization.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL jointly and severally with Amtote Systems reimburse Ohio Lottery and Teletrack employees for any initiation fees or dues or other moneys paid or checked off pursuant to the aforesaid agreement or amendment or any extension, renewal, modification or supplement thereof, or to any agreement superseding it, plus interest. Such reimbursement shall not, however, extend to any employees who may have voluntarily joined and been members of this Union before September 27, 1979.

WE WILL jointly and severally with Amtote Systems reimburse, with interest, employees at all Amtote Systems locations, other than the Ohio Lottery and Teletrack facilities, for any dues and fees unlawfully withheld without authorization from their pay during the first 45 days of employment, and accepted and retained by us.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1501, AFL-CIO

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge: This case was heard on July 20 and 21, 1981, in Hartford, Connecticut. The consolidated complaint herein alleges that Respondent Amtote Systems discriminated against and discharged employee Debra LaValle for engaging in protected concerted activity in violation of Section 8(a)(1) of the Act. It also alleges that Respondent Amtote Systems violated Section 8(a)(3), (2), and (1) of the Act by providing aid and assistance to Respondent Union and by applying their existing collective-bargaining agreement, including its recognition, dues, and union-security clauses, to groups of employees who had not given their uncoerced majority support to the Union, and that Respondent Union violated Section 8(b)(1)(A) and (2) by accepting such aid and assistance and by also extending the agreement to groups of employees who had not given it uncoerced majority support. Respondent Union denied the substantive allegations of the complaint. Respondent Amtote Systems denied improperly discharging LaValle, as well as the conclusory allegations of the remainder of the complaint, but admitted some of the underlying allegations of assistance to Respondent Union. The General Counsel and Respondent Union filed briefs.

Based on the entire record herein, including the testimony of the witnesses and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT EMPLOYER

Respondent Amtote Systems is a division of General Instrument Corporation, a Delaware corporation. It maintains offices and places of business in New Haven, Connecticut, and other locations in several States, where it is engaged in the operation of off-track wagering facilities, state lotteries, and related services. Its main Connecticut office is located at Mitchell Drive, New Haven, Connecticut. It also has offices and places of business located at Long Wharf Drive, New Haven, Connecticut (herein called the Teletrack facility); Broadview Heights, Ohio (herein called the Ohio Lottery); New York, New York; Hunt Valley, Maryland; and Clifton, New Jersey. During the calendar year ending December 31, 1980, Respondent Amtote Systems, in the course and conduct of its business operations, purchased and received at its New Haven facilities products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Connecticut. Accordingly, I find, as admitted by Respondent Amtote Systems, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Discharge of Debra LaValle*

Debra LaValle began working at Respondent Amtote Systems' Teletrack facility when it opened in October 1979. She was an admissions clerk who sold tickets to patrons entering the facility. She worked an average of 22 hours per week on the day shift. There were seven admissions clerks on the day shift and seven others on the night shift when LaValle was employed.

During her employment LaValle and her fellow workers complained among themselves and to management officials about working conditions. The admissions clerks were not paid for about 5 weeks after they started work. LaValle talked to day-shift Supervisor Ira Smith about this problem. LaValle also talked to Harla Levitt, a fi-

nancial officer with Respondent Amtote Systems, about the problem. LaValle called several government agencies about the paycheck delays and spoke to other employees about her efforts. LaValle also complained to Smith and Levitt about other job-related problems: the admissions clerks worked very near the entrance to the facility and in winter their work area was very cold, in part due to the cold air coming in through the entrance. At times the employees had to wear gloves on the job. LaValle called another government agency about this problem. She also complained to management officials about dirty blazers which the admissions clerks were required to wear and the failure of Respondent Amtote Systems to pay certain benefits. Employee Doreen Blakeslee testified that LaValle was the most vocal employee in addressing these problems and that the rest of the employees followed her lead.

On January 12, 1980, LaValle worked a full day and was called into General Manager William Drew's office at the end of the workday. He told her she would be terminated because of poor evaluations from Smith and Levitt stating that she had an "attitude problem with her co-workers." She asked to see the evaluations but he refused to show them to her. She denied the charges and asked Drew to speak to her coworkers to ascertain the truth of the charges. Drew said he would not do this but advised LaValle to talk to Smith.

LaValle later spoke to Smith. Smith said his evaluation of her was the same as one he had written for another employee who had been promoted. He did not mention an attitude problem although he did accuse her of deficiencies in her accounts.[1] Smith had never before warned LaValle of any attitude problems or any other deficiencies in her work. Smith did not testify in this proceeding so LaValle's testimony set forth above concerning her relationship and conversation with Smith is uncontradicted.

Drew's testimony about the discharge conversation basically corroborated LaValle's except that he denied telling her that her attitude problem was limited to relationships with coworkers. His expressed concern was reports he had received that LaValle was passing on her job-related complaints to customers. Harla Levitt testified that she twice saw LaValle complaining to customers, on one occasion about her paycheck and the other about her dirty blazer, and that she told LaValle to talk to her about these problems rather than to customers. She testified that she reported these incidents to Drew at the time they occurred and suggested he mention them to Ira Smith. According to uncontradicted testimony, neither Smith nor Drew talked to LaValle about these specifics or warned her that speaking to customers about her job complaints was objectionable or job threatening.

The testimony of Drew is rendered somewhat less than reliable because it conflicts both with Levitt's testimony and documentary evidence. Thus, Drew testified that Smith, not Levitt, had told him LaValle had complained to customers. He himself had never seen LaValle talking to customers. He did not elaborate on his alleged conversation with Smith or testify that he told Smith to warn LaValle that this was wrong. Moreover, in Respondent Amtote Systems' report to the unemployment compensation office, it stated clearly that LaValle was fired for her attitude towards her "job, customers & *co-workers*" (emphasis supplied). The latter was emphatically denied by Drew. In these circumstances, I find and conclude that Drew and Levitt attempted, in their testimony, to conceal their concern over LaValle's job-related complaints to management by trying to emphasize their alleged concern over her repeating these complaints to customers.

Respondent Amtote Systems admits in its answer to the complaint that LaValle was engaged in protected concerted activity when she made her job-related complaints, but it denies that it fired her for this reason. I find that Respondent Amtote Systems did indeed fire LaValle for engaging in protected concerted activity. She was the most active protester of the employees on a whole range of job-related complaints, and, according to uncontradicted testimony, on the day of her discharge, Ira Smith informed another employee, Doreen Blakeslee, that LaValle was "an instigator, a loud mouth. She started all the trouble, and was a very cold person and critical of everyone." It was also uncontradicted that LaValle met with Levitt and Respondent Amtote Systems' comptroller, Steve Sharlor, in Levitt's office and told them that she had called government agencies and that it was against the law for Respondent Amtote Systems to hold back employee pay. Clearly, in these circumstances, the General Counsel has established a *prima facie* case of discrimination based on LaValle's protected concerted activity.

Respondent Amtote Systems has not rebutted the evidence submitted by the General Counsel. As I have indicated above, Respondent Amtote Systems witnesses were not credible in their contentions that they were concerned only with LaValle's complaints to customers. There is absolutely no evidence of her "attitude problem with co-workers," the reason offered by Respondent Amtote Systems for the termination. Indeed, it appears to have been a euphemism for LaValle's protected concerted activity in view of employee Blakeslee's testimony that Ira Smith accused LaValle of being "an instigator" and "a loud mouth" on the day of LaValle's discharge. Finally, even if LaValle had complained about her work-related problems to customers on two occasions, as Levitt testified, and assuming, *arguendo*, that Respondent Amtote Systems terminated her for this reason, such conduct was simply incidental to her internal complaints to management and not so improper as to remove her overall conduct from the protection of the Act. There were no rules against talking to customers, no disruption took place, and LaValle's comments were truthful. In these circumstances, Respondent Amtote Systems has not shown that LaValle would have been terminated even in the absence of her protected concerted activity.

[1] This apparently was a reference to an earlier conversation between LaValle and Levitt. Levitt had told employees that they would have to personally reimburse Respondent Amtote Systems for shortages in their cashboxes. LaValle, in protests, sarcastically asked whether they could keep overages. Smith's reference to this incident suggests an animus towards LaValle for her protests against working conditions.

B. *The Bargaining Relationship of the Parties*

Respondent Amtote Systems provides equipment, maintenance, and computer services for state off-track betting and lottery operations.[2] The machine maintenance personnel employed by Amtote Systems at locations in New York, New Jersey, and Maryland had been covered by a collective-bargaining agreement with the Union for several years. On October 23, 1978, after a Board-conducted election, the Union was certified to represent computer operators and related personnel at Amtote Systems' locations in New Haven, Connecticut; Hunt Valley, Maryland; New York City; and Clifton, New Jersey. Following the certification, on December 20, 1978, Amtote Systems and the Union executed a collective-bargaining agreement covering the maintenance-personnel and the newly certified unit. The agreement contains a lawful provision requiring employees to join the Union within 15 days following the 30th day of their employment. There is also a provision permitting the deduction of dues and initiation fees from the wages of employees provided they deliver a proper written assignment for such deduction.

On September 27, 1979, Amtote Systems and the Union amended their contract to add new employees at Broadview Heights, Ohio (Ohio Lottery), and at Amtote Systems' New Haven Teletrack facility. With respect to the Teletrack facility, the amendment listed some job classifications which were outside those specifically mentioned or covered in the previous agreement and set forth wage rates for those classifications. The new job classifications included projection, videotape and audio engineers, as well as admissions clerks.

At the time of the amendment, Amtote Systems had been awarded a contract with the State of Ohio to provide and maintain equipment for a lottery. But the Ohio Lottery did not become fully operational until April 1980. The New Haven Teletrack facility opened on or about October 26, 1979, but, at the time of the amendment, there were no employees assigned to the facility.

On November 20, 1980, the parties signed a new agreement, which expires on June 1, 1983, essentially incorporating the above amendments and including the same union dues and security clause as was contained in the 1978 agreement.

C. *Alleged Unlawful Recognition and Assistance of the Union by Amtote Systems in Connection With Newly Hired Employees at Teletrack and the Ohio Lottery*

Amtote Systems admitted it provided certain specifically alleged forms of assistance to the Union in connection with its Teletrack and Ohio Lottery operations on and after September 27, 1979. Thus, it admitted that it provided the Union with a room to meet with employees at the Teletrack facility and paid the employees for time spent at the meeting. It also admitted that—at both Teletrack and the Ohio Lottery—it solicited newly hired employees to sign the Union's dues-checkoff authorization and membership applications. It also admitted that it required employees at these facilities to pay dues and initiation fees to the Union which were withheld from the wages of employees and paid to the Union, notwithstanding the absence of valid authorizations from employees. Amtote Systems applied the union-security and dues-checkoff provisions of the existing agreement to Teletrack and the Ohio Lottery. Teletrack employees and officials of both Respondents confirmed that this type of assistance was provided to the Union at least at the Teletrack and Ohio Lottery facilities.

In its brief, the Union does not really dispute the above, except that it argues that a single meeting on an employer's premises is insufficient "without more" to show assistance, that no evidence was shown to establish assistance at the Ohio Lottery, and that dues deducted from certain admissions clerks at Teletrack were returned. The Union's arguments are unpersuasive insofar as they apply to Teletrack and the Ohio Lottery. Respondent Amtote Systems' role in facilitating attendance at the union meeting did not stand alone. It was part and parcel of the overall attempt by both Respondents to apply the existing agreement to the Ohio Lottery and Teletrack employees. The fact that some dues were reimbursed is no answer to the fact that dues were collected prematurely and by virtue of the assistance of Amtote Systems. And, finally, Respondent Amtote Systems admitted its conduct at the Ohio Lottery and no contrary evidence was presented. Indeed, Union President Dion Guthrie conceded that, by agreement between Amtote Systems and the Union, Amtote Systems handed out "payroll deduction cards and Union obligation cards."

Based upon the admissions of the parties and the evidence in support thereof, set forth above, I find that the Union did not represent an uncoerced majority of the employees at the Ohio Lottery and Teletrack. Undisputed evidence establishes that Amtote Systems and the Union sought to apply to those employees the terms of its existing agreement, including the recognition, dues, and union-security provisions thereof. Respondent Amtote System's acts of assistance were undertaken pursuant to its recognition of the Union at Teletrack and Ohio Lottery by virtue of the contract amendment of the parties dated September 27, 1979. Such conduct by Amtote Systems and the Union's acceptance of and acquiescence in such conduct is unlawful unless the Teletrack and Ohio Lottery facilities were lawfully covered by the existing agreement. See *Melbet Jewelry Co., Inc., et al.*, 180 NLRB 107 (1969).

The Union contends that the Ohio Lottery and Teletrack were lawful accretions to the existing unit and therefore there was no need to establish its uncoerced majority status before recognition. The standard for finding an accretion was set forth by the Board in *Melbet Jewelry Co, supra*. In that case, the Board held that an accretion will be found only if the units sought to be accreted cannot be determined to be separate appropriate units. As the Board stated:

> We will not . . . under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an over-

[2] Another division of General Instrument Corporation, Amtote Company, is responsible for on-track wagering operations. Amtote Company's employees are covered by a separate bargaining agreement and are also represented by Respondent Union.

> all unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the union to represent them. [180 NLRB at 110.]

Factors considered by the Board in determining whether there has been an accretion include the frequency of interchange of employees, the degree of common supervision, integration of operations, the similarity of job classifications and duties, geographic proximity, and bargaining history. See, in addition to *Melbet Jewelry Co., supra, Combustion Engineering, Inc.*, 195 NLRB 909, 912 (1972); *Meijer, Inc., d/b/a Meijer's Thrifty Acres*, 222 NLRB 18, 24–26 (1976).

Applying the above authorities and principles to the instant case, I find that Teletrack and the Ohio Lottery could indeed be found to be separate appropriate units and thus they are not to be considered accretions to an existing unit without affording employees working at those facilities an opportunity to select or reject the Union.

The amount of employee interchange between the existing unit and the new facilities does not require that they be accreted to the existing unit. The transfers between other Amtote Systems facilities and the Ohio Lottery are minimal. Only 1 of the 37 current Ohio Lottery employees transferred from another Amtote Systems facility and there is no evidence of any transfers in the other direction. There is no evidence of transfers between Teletrack and other Amtote Systems facilities except for the Mitchell Drive facility. Transfers between Mitchell Drive and Teletrack are understandably greater because both facilities are in the same city. But even these do not obliterate the separation of these facilities. Only 3 of the 31 employees originally assigned to the Teletrack facility were transferred from Mitchell Drive. According to Amtote Systems' group manager for human resources, John Monahan, there have been no transfers since the opening of Teletrack. According to Union Steward Louie Severino, there have been three transfers from Mitchell Drive to Teletrack and two the other way. In addition, it appears that three or four other service technicians rotate between Teletrack and Mitchell Drive. They service some of the Teletrack equipment but they report to, and are supervised by, personnel at Mitchell Drive.

The Union argues that, during the startup operations at both facilities, numerous of its members worked at the Ohio Lottery and Teletrack. This does not constitute evidence of an interchange of employees. Most of these employees are employed by Amtote Company, a separate division from Amtote Systems; they were permanently assigned to their home facility, primarily Hunt Valley, Maryland, and worked only temporarily at the new facilities in order to make sure that the newly installed machinery worked properly. In addition, many of these personnel, especially those doing the training of employees, were management or supervisory officials.

The two new facilities are separately supervised. The Ohio Lottery is organized as a separate and distinct unit from the other Amtote Systems facilities. It is also separately supervised. There is no evidence of centralized control of labor relations. Teletrack is also separately supervised with its manager reporting to the manager of Connecticut operations.

The degree of integration of the new facilities with existing Amtote Systems operations does not obliterate the separate identity of the new facilities. The Ohio Lottery operation is based on a contract with the State of Ohio. If that contract were severed there would be no effect on the other facilities. If New York or New Jersey contracts were severed, the Ohio Lottery would still function. The Teletrack facility has a bit more of a relationship with Mitchell Drive because its ticket-issuing machines are tied into the computer at Mitchell Drive. The odds given for a wager made at Teletrack are the same as those at its other off-betting parlors in Connecticut. To a certain extent, Teletrack is another off-track betting parlor. However, it is more than that. It is a separate integrated operation of its own which was spawned by separate negotiations between the State of Connecticut and Amtote Systems. Separate admission is required and patrons view a 4-1/2-hour film of racing, interrupted by nine live 2-minute races brought in by microwave. Patrons can bet on the races and eat dinner or have refreshments during their stay. Thus, in some respects, Teletrack is closer to the on-track operations of Amtote Company than the off-track and lottery operations of Amtote Systems. Finally, the Mitchell Drive facility could and did exist before Teletrack and it continues to provide services for the remainder of the Connecticut off-track betting parlors.

Most significantly with respect to Teletrack, its unique character requires a different mix of job classifications than exist elsewhere in Amtote Systems. Projectionists and nonskilled admissions clerks are new kinds of employees for Amtote Systems. Indeed, the admissions clerks are paid much less than, and have no contact with, the other employees at Teletrack. Moreover, even at the Ohio Lottery where there is a similarity in job classifications and duties to jobs elsewhere, the equipment used for the Ohio Lottery represents a totally new generation of equipment, and, according to an Amtote Systems' official, employees from its other facilities could not easily operate the Ohio Lottery equipment.

The Ohio Lottery facility is, of course, geographically separate from the rest of the Amtote Systems facilities. Although Teletrack is in the same city as, and a short distance from, the Mitchell Drive facility, it is some distance from the other facilities in Maryland and New York and New Jersey. In view of Teletrack's uniqueness in other respects, its geographical proximity to Mitchell Drive does not require that it not be considered a separate appropriate unit.

The bargaining history in this case is inconclusive. It appears that the parties did add some facilities to comprise an overall machine maintenance unit prior to 1978. These additions, however, involved small numbers of employees. When the parties wanted to add a new and larger group of employees—the computer operators—to the unit, an election was petitioned for and held. Nothing

in the bargaining history of the parties requires a finding of accretion.

In sum, the evidence herein persuasively and conclusively shows that Teletrack and the Ohio Lottery can and should be treated as separate appropriate units and may not be accreted to the existing unit. Accordingly, I find that, by unlawfully assisting and supporting the Union and by unlawfully recognizing the Union and extending the dues and union-security provisions of its existing contract with the Union to the Ohio Lottery and Teletrack employees, Amtote Systens violated Section 8(a)(1), (2), and (3) of the Act. I also find that, by acquiescing in the above conduct and by accepting recognition and extending the dues and union-security provisions of the contract to the Ohio Lottery and Teletrack employees, the Union violated Section 8(b)(1)(A) and (2) of the Act. See *Melbet Jewelry Co., supra.*

D. *The Alleged Unlawful Dues Checkoff and Union Authorization Procedures Utilized at Amtote Systems Locations Other Than Teletrack and the Ohio Lottery Which Were Lawfully Covered by the Existing Bargaining Agreement*

In this portion of the case, I consider only that part of the General Counsel's complaint allegation which focuses on employees at Amtote Systems locations already covered by lawful recognition, dues, and union-security clauses. This discussion does not cover the Ohio Lottery and Teletrack employees whose situation has been covered in part C of this Decision and who obviously were coerced by Respondent's dues-checkoff and union authorization procedure because a collective-bargaining agreement was improperly extended to them without their consent.

The General Counsel alleges that both Respondents violated the Act by utilizing, after September 19, 1979,[3] an unlawful dues-checkoff and union authorization procedure at all of its facilities, including those at which a lawful union-security agreement was in force. The testimony of Amtote Systems' group manager for human resources, John Monahan, establishes that newly hired employees at all locations were given dues-checkoff authorizations and union membership applications "as part of the hiring practice to be signed." This is confirmed by the testimony of Union President Dion Guthrie, who testified not only that the procedure covered all Amtote Systems facilities but that the Union agreed to and acquiesced in the procedure. He testified as follows:

> Well regardless where our new employees started working, wherever it was or whatever location Amtote Systems operated, there was always an agreement between the Union and the Employer, that the Employer when he handed out the packet of all the different papers that he had to sign, medical, pension, etc., that they also handed out the payroll deduction cards and Union obligation cards.[4]

In addition, the General Counsel alleges that Respondent Amtote Systems violated the Act by actually deducting and transmitting to the Union dues and initiation fees from the wages of its employees at all locations within the first 45 days of their employment and that Respondent Union violated the Act by accepting them. This allegation also applies only to conduct occurring on and after September 19, 1979, and refers to the union-security provision in the parties' contract which gives employee a grace period of 45 days from the beginning of their employment in order to join the Union.

It was stipulated by the parties that, in some cases, after September 27, 1979, employees had their dues deducted during the first 30 days of their employment, "both with and without valid checkoffs." There is other evidence concerning the dues-deduction procedure. Union President Guthrie conceded that he knew dues were collected from the first day of an employee's employment but that this procedure ended at some point and is no longer in effect. On June 2, 1981, the Union wrote Amtote Systems a letter asking it not to deduct dues in the future until after 31 days of employment. Amtote Systems responded in a letter from one of its officials stating its view that the dues-checkoff procedure utilized "over the years was improper."

It is well settled that, even in the presence of a valid dues-checkoff and union-security clause, an employer gives unlawful assistance to an incumbent union under Section 8(a)(2) and (1) of the Act by deducting dues from the wages of an employee in the absence of a valid authorization from the employee, and the union, by accepting such dues, violates Section 8(b)(1)(A) of the Act. See *American Geriatric Enterprises, Inc., et al.*, 235 NLRB 1532, 1538 (1978), and cases there cited; *Fieldston Ambulance & Medical Systems, Ltd.*, 242 NLRB 185, 189 (1979), and cases there cited.

In the instant case, it is clear from the stipulation, its context, and the evidence that Amtote Systems did indeed deduct dues and fees from employees in the absence of valid authorizations that this was done with the agreement and acquiescence of the Union and that the Union accepted such dues and fees. Accordingly, I find, in accordance with the authorities cited above and the evidence herein, that Amtote Systems thereby violated Section 8(a)(2) and (1) of the Act and that the Union violated Section 8(b)(1)(A).[5]

The General Counsel also seems to contend that findings should be made that, even at locations covered by a

[3] This date was obviously picked because it covered a period within the outer limits of Sec. 10(b) of the Act. The initial charge herein was filed on March 19, 1980.

[4] The complaint allegation omitted two of the Amtote Systems locations from its coverage. However, it is clear from the testimony of representatives from both Respondents that the same procedure applied to all facilities. The thrust of this portion of the complaint was that all of the Amtote Systems locations were involved and the parties understood this to be the case. Accordingly, my findings on this aspect of the case shall apply to all Amtote Systems' facilities covered by its agreement with the Union.

[5] The Union contends that, although dues were deducted and paid to the Union from the employee's first paycheck, they were credited prospectively and an employee whose employment "was terminated early received refunds." Apparently, according to the Union, the first month's dues were applied to the third month and employees who left within the probationary period were refunded the dues collected. This does not provide an adequate defense. Obviously, some employees who did not leave may not have signed valid checkoff authorization and yet had dues and fees deducted from their wages.

valid agreement, employees were forced to sign dues authorization cards and union membership cards from the first day they were employed and that these employees were entitled to the full 45-day grace period permitted by the contract within which to sign these documents. From these proposed findings, the General Counsel seems to argue that employees at all locations were forced prematurely to join the Union and to pay dues and that therefore dues should be reimbursed for this period. I disagree because the evidence does not support such findings or conclusions. There is no evidence that employees were forced to join the Union or to sign dues authorizations from the first day of their employment. It is true that employees were given union membership and dues authorization forms along with other preemployment forms which employees normally fill out when they start a new job. However, nothing in the testimony of Monahan or Guthrie supports a finding that these employees were forced to sign these forms. Monahan simply testified, "[T]he forms were given out as part of the hiring practice to be signed." Indeed, according to the stipulation, some employees did not sign checkoffs. Obviously, newly hired employees may desire to sign up with an incumbent union immediately even though they have 45 days within which to do so. In the absence of specific evidence to the contrary, I find nothing coercive in the procedure utilized by Respondents for new employees to sign union membership and dues authorizations in the face of otherwise lawful dues-checkoff and union-security clauses. See *Colin Service Systems, Inc.*, 226 NLRB 70, 72 (1976); *Keller Plastics Eastern, Inc.*, 157 NLRB 583, 587 (1966).

In his brief, the General Counsel seems to argue that Monahan's testimony and Respondent Amtote Systems' answer permit the inference that employees were *required* or *coerced* to sign the documents, as if the mere use of these pejorative words imbues them with substance. I do not so read either Monahan's testimony or the answer. I have already quoted Monahan's testimony. It contains nothing about employees being forced or required to sign the documents. Amtote Systems' answer to paragraph 17 of the complaint is less than lucid—and Amtote Systems declined to file a brief—but it seems to me fairly to deny subparagraph (a) which alleges that Amtote Systems required and coerced newly hired employees at four named locations, including Teletrack and the Ohio Lottery, to sign these documents. Moreover, the remainder of the answer seems calculated not only to question the allegation that the procedure "commenced" on September 19, 1979 (Amtote Systems argued in a June 1981 letter that this was a longtime practice), but also to distinguish between the Teletrack and Ohio Lottery employees, as to which the issue was basically the legality of extending the recognition, dues, and union-security clauses of the existing agreement, and employees at the remainder of its locations which were lawfully covered by those clauses in the existing agreement. Furthermore, Respondent Amtote Systems had no problem with admitting to subpart (b) of paragraph 17 since it had indeed deducted dues within the first 45 days of employment at all of its locations, including those lawfully covered by the agreement. Although there is some ambiguity in the answer—perhaps due to a poorly drafted complaint—I believe a fair reading of it, taken in conjunction with the evidence on the point, establishes that there was no concession that Amtote Systems required or coerced employees to sign union membership and dues authorization forms at locations other than Teletrack and the Ohio Lottery. In any event, no employees or supervisors from locations other than Teletrack or the Ohio Lottery testified. In view of the ambiguity mentioned above and the absence of any specific testimony on the issue, there is insufficient evidence to require a finding that the signed membership cards and authorizations were not freely given even though they were given well within the 45 days permitted by the contract and they were handed out with other preemployment forms.

In sum, I find that both Respondents violated the Act by actually deducting, collecting, and accepting dues and fees to the extent that this was done—at any time—without valid checkoff authorizations. I do not find that Respondents violated the Act in any other respect by their procedure of having union membership and dues authorization cards handed out to employees to sign along with other preemployment forms.

CONCLUSIONS OF LAW

1. By discharging employee Debra LaValle for engaging in protected concerted activity, Respondent Amtote Systems violated Section 8(a)(1) of the Act.

2. By unlawfully assisting and supporting Respondent Union and by unlawfully recognizing it and extending the dues and union-security provisions of its collective-bargaining agreement with Respondent Union to its Ohio Lottery and Teletrack employees, Respondent Amtote Systems has violated Section 8(a)(1), (2), and (3) of the Act.

3. By acquiescing in Respondent Amtote Systems conduct set forth above and by accepting recognition and extending the dues and union-security provisions of its collective-bargaining agreement with Respondent Amtote Systems to the Ohio Lottery and Teletrack employees, Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

4. By deducting dues and initiation fees from the wages of employees and transmitting them to Respondent Union without valid authorizations for such deductions and dues being given by such employees, Respondent Amtote Systems has violated Section 8(a)(1) and (2) of the Act.

5. By accepting dues and initiation fees deducted from wages of employees without valid authorizations from such employees, Respondent Union has violated Section 8(b)(1)(A) of the Act.

6. The above violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondents have not otherwise violated the Act.

THE REMEDY

Having found that Amtote Systems violated Section 8(a)(1) and (2) of the Act by its assistance to and recog-

nition of the Union as bargaining representative of its Teletrack and Ohio Lottery employees and by extending the coverage of its existing contract with the Union to those employees, and that the Union, by acquiescing in such conduct and by accepting recognition and extension of the contract to the Teletrack and Ohio Lottery employees, violated Section 8(b)(1)(A) of the Act, I shall order both Respondents to cease and desist from said violations of the Act, and to cease giving effect to their agreement, insofar as it affects the Teletrack and Ohio Lottery employees, without, however, requiring Amtote Systems to vary any wage or other substantive features established under the agreement. I shall also order that Amtote Systems withdraw its recognition of the Union as to the Teletrack and Ohio Lottery employees and that the Union cease acting as bargaining representative of said employees unless and until the Union's representative status has been established in a Board-conducted election.

Having found violations of Sections 8(a)(3) and 8(b)(2) of the Act in the unlawful extension of the dues and union-security clause Respondents' agreement to the Ohio Lottery and Teletrack employees, I shall also order that the employees of Teletrack and the Ohio Lottery be reimbursed for dues and fees unlawfully exacted from them with interest in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). Respondents are jointly and severally liable for such reimbursement. See *Melbet Jewelry, Co.*, 180 NLRB at 110.

Having also found that Amtote Systems has, in some cases, withheld dues and initiation fees from the wages of employees who had not signed checkoff authorizations and remitted same to the Union in violation of Section 8(a)(1) and (2) of the Act, and that the Union violated Section 8(b)(1)(A) of the Act by accepting and retaining such unlawfully obtained funds, I shall order that both Respondents cease and desist from the conduct found unlawful. I shall not, however, order reimbursement of dues collected from employees in such circumstances at locations other than Teletrack and the Ohio Lottery, as requested by the General Counsel. At all material times the employees affected by such unlawful conduct were covered by a valid dues-checkoff and union-security clause, unlike the Ohio Lottery and Teletrack employees. Moreover, there is no evidence that such employees, unlike those at the Ohio Lottery and at Teletrack, were coerced into joining the Union or into making payments to the Union. See *American Geriatric Enterprises*, 235 NLRB at 1532, and *International Union of Electrical, Radio and Machine Workers, Local 601 AFL-CIO (Westinghouse Electric Corporation)*, 180 NLRB 1062, 1063 (1970).

Finally, having also found that Amtote Systems unlawfully terminated employee Debra LaValle for engaging in protected concerted activity in violation of Section 8(a)(1) of the Act, I shall order it to cease and desist from its unlawful conduct and to reinstate Debra LaValle to her former job or, if that job no longer exists, to a substantially equivalent position, and to make her whole for any loss of wages and other benefits suffered by reason of the discrimination against her with backpay and interest to be computed as set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[6]

Based upon the foregoing findings of fact and conclusions of law, I hereby issue the following recommended:

ORDER[7]

A. Respondent General Instrument Corporation, Amtote Systems Division, New Haven, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing support and assistance to Respondent Union or to any other labor organization of its employees.

(b) Recognizing Respondent Union as the exclusive bargaining representative of any of its Ohio Lottery or Teletrack employees unless and until said labor organization shall have demonstrated its majority status pursuant to a Board-conducted election among said employees.

(c) Giving effect to any of the terms of the collective-bargaining agreement of November 28, 1980, and the amendment to an earlier agreement dated September 27, 1979, between it and Respondent Union, as well as any modifications, extensions, or renewals thereof, insofar as they apply to the Ohio Lottery and Teletrack employees, provided that nothing herein shall require Respondent Amtote Systems to vary or abandon any wages, hours, or other substantive terms of its relations with its Ohio Lottery and Teletrack employees which have been established in the performance of the agreement or to prejudice the assertion of any rights they may have thereunder.

(d) Assisting Respondent Union by deducting from the wages of its employees, at any location, amounts equal to union initiation fees and dues when such deductions are not authorized by said employees through checkoff authorizations.

(e) Discharging or otherwise interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Respondent Union as the exclusive bargaining representative of the Ohio Lottery and Teletrack employees for the purpose of collective bargaining unless and until said labor organization shall have demonstrated its majority status pursuant to a Board-conducted election among the Ohio Lottery and Teletrack employees.

[6] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Jointly and severally with said Respondent Union reimburse the Ohio Lottery and Teletrack employees for any dues or initiation fees or other moneys paid or checked off pursuant to the aforesaid agreement or amendment or any extension, renewal, modification, or supplement thereof, or to any agreement superseding it, plus interest, as set forth in the Remedy section of this Decision. Such reimbursement shall not, however, extend to any employees who may have voluntarily joined and been members of Respondent Union before September 27, 1979.

(c) Offer to Debra LaValle immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings in the manner set forth in the Remedy section of this Decision.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports and all other documents necessary and relevant to analyze and compute the amount of backpay due under this Order.

(e) Post at all of its locations copies of the attached notice marked "Appendix A."[8] Copies of said notice, on forms provided by the Regional Director for Region 39, after being duly signed by Respondent Amtote Systems' representative, shall be posted by Respondent Amtote Systems' immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Amtote Systems to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Post at the same places and under the same conditions as set forth in paragraph (e) above, and as soon as they are forwarded by the Regional Director, copies of Respondent Union's notice herein marked "Appendix B."

(g) Notify the said Regional Director, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

B. Respondent International Brotherhood of Electrical Workers, Local 1501, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Acting as the exclusive bargaining agent of Respondent Amtote Systems' Ohio Lottery and Teletrack employees unless and until said Union shall have demonstrated its majority status pursuant to a Board-conducted election among the Ohio Lottery and Teletrack employees.

(b) Giving effect to any terms of the collective-bargaining agreement of November 28, 1980, and the amendment to an earlier agreement dated September 27, 1979, between it and Respondent Amtote Systems, as well as any modifications, extensions, or renewals thereof, insofar as they apply to the Ohio Lottery and Teletrack employees.

(c) Accepting and retaining moneys in the amounts equal to union initiation fees and dues which have been deducted from the pay of Respondent Amtote Systems' employees at any location without prior written authorization from employees.

(d) In any like or related manner restraining and coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Amtote Systems reimburse Ohio Lottery and Teletrack employees for any initiation fees or dues or other moneys paid or checked off pursuant to the aforesaid agreement or amendment or any extension, renewal, modification or supplement thereof, or to any agreement superseding it, plus interest, as set forth in the Remedy section of this Decision. Such reimbursement shall not, however, extend to any employees who may have voluntarily joined and been members of Respondent Union before September 27, 1979.

(b) Post in conspicuous places in its business office, meeting halls, and places where notices to members are customarily posted copies of the attached notice marked "Appendix B."[9] Copies of said notice, to be furnished by the Regional Director for Region 39, shall, after being duly signed by an authorized representative of Respondent Union, be posted by Respondent Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent Union to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Furnish the Regional Director signed copies of the aforesaid notice for posting by Respondent Amtote Systems at all of its locations in places where notices are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed as indicated, be forthwith returned to the Regional Director for disposition by him.

(d) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[9] See fn. 8, *supra*.